



CONNECTICUT BANKERS ASSOCIATION

March 9, 2011

To: Members of the Judiciary Committee

Fr: Connecticut Bankers Association
Contact: Tom Mongellow, Fritz Conway

**Re: H.B. No. 6274 AN ACT CONCERNING AMENDMENTS TO ARTICLE 9 OF
THE UNIFORM COMMERCIAL CODE CONCERNING SECURED
TRANSACTIONS.**

Position: Support with Changes

The CBA is generally supportive of H. B. 6274, which adopts provisions of Article 9 of the Uniform Commercial Code (UCC).

We are however, opposed to the provisions in Section 10 of the bill which deals with how the "name" of the debtor is detailed on the loan document or "financing statement" as it is referred to in UCC 9. The name issue is particularly important to lenders from both the perfection and priority of a security interest.

Of the two name options proposed by the National Conference of Commissioners on Uniform Laws, (NCCUSL), and the banking industry agrees on a national basis that the provisions in NCCUSL's "Alternative A" approach, (sometimes called "Only If Approach"), should be enacted in each state.

Unfortunately, H. B. 6274, contains what is known as "Alternative B" or the Safe Harbor Approach, which the banking industry believes will leave uncertainty as to the priority of a lenders security interest.

H. B. 6274 has an effective date of July 1, 2013, reflecting the time necessary to implement the many provisions of this revised UCC 9. The office of the Secretary of State and the Department of Motor Vehicles are key agencies, when looking at the Alternative A provisions, from the perfecting of the security interest to the verification of identification. While we understand there are concerns that those agency data systems may have difficulty providing the linkage necessary to address the bills "name" provisions, we believe that with the effective date being over two years in the future that the systems may be able to be synchronized by that point.

We urge the Committee's consideration of adopting the NCCUSL's "Alternative A" approach and would welcome the opportunity to work with Committee, proponents of the bill and the affected agencies.

Background

During the drafting of the 2010 Amendments to UCC Article 9, the American Law Institute/National Conference of Commissioners on Uniform State Laws Committee considered

multiple issues. One of the most significant related to provisions concerning the name of an individual debtor.

UCC Article 9's requirement that a financing statement provide the debtor's name is particularly important. Financing statements are indexed under the name of the debtor, and those who wish to find financing statements search for them under the debtor's name.

The question before the Drafting Committee was clear: Should Article 9 provide a more certain rule to determine the name of a debtor who is an individual? Many felt that clarification was needed. One reason was because courts, in interpreting the Uniform Commercial Code, have struggled in determining whether a particular financing statement that contains the debtor's name as reflected on his or her birth certificate, driver's license, passport or other identification, or even a debtor's nickname or commonly used name, is the correct name of the debtor for the financing statement to be sufficient.

There was a difference of opinion within the Drafting Committee as to the best approach on this matter. As a compromise, the Committee decided to provide states with two alternative sets of amendments relating to the names of individual debtors. There is an Alternative A (sometimes called "Only If Approach"), and there is an Alternative B (sometimes called "Safe Harbor Approach") to address the issue. The 2010 NCCUSL Amendments have wording to implement each approach.

Alternative A (Only If Approach). Generally, Alternative A distinguishes between two groups of individual debtors. For debtors holding an unexpired driver's license issued by the State where the financing statement is filed (ordinarily the State where the debtor maintains the debtor's principal residence), Alternative A requires that a financing statement provide the name indicated on the license. When a debtor does not hold an unexpired driver's license issued by the relevant State, the requirement can be satisfied in either of two ways. A financing statement is sufficient if it provides the "individual name" of the debtor. Alternatively, a financing statement is sufficient if it provides the debtor's surname (i.e., family name) and first personal name (i.e., first name other than the surname).

Alternative B (Safe Harbor Approach). Generally, Alternative B provides three ways in which a financing statement may sufficiently provide the name of an individual who is a debtor. The "individual name" of the debtor is sufficient, as is the debtor's surname and first personal name. If the individual holds an unexpired driver's license issued by the State where the financing statement is filed (ordinarily the State of the debtor's principal residence), the name indicated on the driver's license also is sufficient.

The American Bankers Association Working Group on UCC Article 9 has studied the matter in detail, and has concluded that Alternative A is the only approach that should be enacted. Composed of bank lawyers and state bankers association professionals, the Group had numerous meetings over a two-year period. In meetings with the ALI/NCCUSL Drafting Committee, the Group highlighted the advantages of the Only If Approach. The ABA Group stressed that the Only If Approach simplifies both filing and searching. Particularly with respect to a debtor having the specified driver's license, the approach will provide greater certainty and more definition of the name. Although the Safe Harbor Approach outlines possible names to use to achieve perfection, it does little to address priority issues, which are central in the business of lending.